

## **REMARKS/ARGUMENTS**

An interference is requested with regard to new claim 38.

### **I. Fees**

*If there are any additional fees due in respect to this amendment, please charge them to Deposit Account No. 13-2165. Authority is hereby given to charge any such deficiency, or credit any overpayment, to Deposit Account No. 13-2165 Mathews, Collins, Shepherd & McKay. The Examiner is invited to contact the undersigned if further information is required.*

### **II. Restriction Requirement**

In response to the Examiner's telephonic communication on July 28, 2003 for a Restriction, Applicant elected to prosecute claims 24-37, and did not elect claim 38 at that time. Applicant herein files a Divisional Application to prosecute claim 38.

### **III. Request for Interference Under 37 CFR §§ 1.607 and 1.608(a)**

Pursuant to the provisions of 37 CFR §1.607 and §1.608(a), Applicant respectfully requests an interference with U.S. Patent No. 6,491,408 ("Cooper *et al.*").

Addressing the requirements of **37 CFR § 1.607**:

**1.607(a)(1)**: U.S. Patent No. 6,491,408, entitled "Pen-size LED inspection lamp for detection of fluorescent material," issued December 10, 2002 to Cooper *et al.* and is assigned to Spectronics Corporation of Westbury, New York.

**1.607(a)(2)**: Applicant proposes the following count:

An inspection lamp comprising:

a lamp housing;

at least one LED

disposed within the lamp housing and

capable of emitting light within a wave length band below  
about 500 nm;

a handle; and

an elongated flexible shaft having a first end fixed to said lamp  
housing and a second end fixed to said handle

whereby bending said flexible shaft permits said lamp housing to  
assume a variety of angular positions relative to said handle.

**1.607(a)(3) and (a)(4):** Claims 6 – 10 and 14 of Cooper *et al.* correspond to the proposed count. The relationship of the proposed count to (i) Cooper *et al.*'s broadest claim, claim 6, and (ii) Applicant's claim 38 is shown in the following table:

<i>Count</i>	<i>Cooper Claim 6</i>	<i>Barjesteh Claim 38</i>
An inspection lamp comprising:	An inspection lamp for detecting refrigerant leaks from air- conditioning systems through illumination of fluorescent materials added to the refrigerant and lubricating oil, said inspection lamp comprising	A hand held light comprising:
a lamp housing;	a lamp housing;	a light head;
at least one LED	at least one LED	at least one LED
disposed within the lamp housing and	located within the lamp housing and	disposed within the light head and
capable of emitting light within a wave length band below about 500 nm;	emitting light within a wavelength band below about 500 nm;	capable of emitting UV/blue LED light;
a handle; and	a handle having	a main body; and
an elongated flexible shaft having a first end fixed to said lamp housing and a second end fixed to said handle	an upper flexible portion attached to the lamp housing and a lower portion;	an elongated flexible stalk at one end to the light head and fixed at the other end to the main body;
whereby bending said flexible shaft permits said lamp housing to assume a variety of angular positions relative to said handle.	wherein the flexible portion may be bent to fit into hard-to-reach areas of the air-conditioning system.	whereby bending the flexible stalk permits the light head to assume a variety of angular positions relative to the main body.

Claims 7-10 and 14 of Cooper *et al.* would also correspond to the count because none of these define a separate patentable invention over the count under the criterion of 37 CFR § 1.601(n). Each incorporates the elements of claim 6 and essentially defines the same invention. Claim 7 specifies that the flexible portion can be bent so as to shorten the length of the lamp. *Bending a flexible* element, with a resultant decrease in length, is obvious if not inherent. Claim 8 calls for a plurality of LEDs but Cooper *et al.*'s claim 6 and the count already call for "at least one LED", necessarily encompassing a plurality. Claim 9 also includes all of the elements of claim 6 and the plurality of LEDs, but specifies that at least one LED emits light within a

wavelength band of from 315nm to about 400nm. This too is encompassed by the language of the count and Cooper *et al.*'s claim 6 ("below about 500 nm") and in the absence of evidence would be obvious. Claim 10 specifies the light emitted from the LED is within the 400 nm to about 480 nm range, which again reads on the "below about 500 nm" limitation of the count and Cooper *et al.*'s claim 6 and would be obvious in the absence of evidence to the contrary. Claim 14 depends on claim 6 and specifies that there is a source of white light. No basis exists in the patent for asserting that the narrower subject matter of claim 14 would be non-obvious over the subject matter of claim 6.

Since the limitations of Cooper *et al.*'s claims 7-10 and claim 14 do not define a separate patentable invention over Cooper *et al.*'s claim 6 or over the proposed count, claims 7-10 and claim 14 should be designated as corresponding to the count.

Claims 1-5, 11-13, and 15-29 of Cooper *et al.*'s patent on the other hand are submitted to define separate patentable invention(s) over that defined by the proposed count and Applicant's claim 38. These may be conveniently considered in four groups (corresponding to the dependencies): claims 1-5, claims 11-13 and 15, claims 16-21, and claims 22-29.

Addressing each of these claims with particularity, Cooper *et al.*'s claim 1, while including an LED pen light, a housing enclosing a power source, and an LED, also requires a hollow handle adapted to receive the pen light, whereby the pen light may be retracted into, or extended out of, the handle. The hollow handle and retractable feature required in claim 1 of Cooper *et al.* are not the same as (35 U.S.C. § 102) and would not be obvious over (35 U.S.C. § 103) the proposed count or Applicant's claim 38, assuming they were prior art. {See 37 CFR § 1.601(n)}. All of the count, Applicant's claim 38, and Cooper *et al.*'s claims 6-10 and 14 require a flexible shaft having one end fixed or attached to the handle. No reason is apparent why, or

indeed *how*, after attaching the shaft to the handle, one skilled in the art would make the handle retractable into, or extendible out of, the handle.

In addition, Cooper *et al.*'s claim 1 specifies a housing having a rear end and a front end, with a glass lens capsule at the front end. Again, the glass lens capsule feature required in claim 1 of Cooper *et al.* would not be obvious assuming the count, Applicant's claim 38, or Cooper *et al.*'s claims 6-10 and 14 were prior art.

Claims 2-4 of Cooper *et al.* depend upon and thus have the same requirements as claim 1 of Cooper *et al.* as discussed above, which include, the hollow handle with retractable shaft, and the glass lens capsule. These requirements in claim 1-4 of Cooper *et al.* would not be obvious assuming the count, Applicant's claim 38, or Cooper *et al.*'s claims 6-10 and 14 were prior art.

Claim 5 of Cooper *et al.* also depends upon, and thus includes the required features of, claim 1 of Cooper *et al.* discussed above and further requires the hollow handle to be slidably engaged within the housing and has a threaded top portion adapted to receive a locking mechanism for locking the pen light at a desired extension out of the handle. The combination of these required features would not be obvious over the count, Applicant's claim 38, or Cooper *et al.*'s claims 6-10 and 14, for the reasons already discussed.

Claim 11 in Cooper *et al.* requires a light-impervious cover for selectively blocking the light emitted from the LED. The requirement of a light-impervious cover in claim 11 is not the same as and would not be obvious from the count, assuming the count, Applicant's claim 38, or Cooper *et al.*'s claims 6-10 and 14 were prior art. No reason is apparent why, after requiring the affirmative presence of a light source, one skilled in the art would add a light-impervious cover.

Claims 12, 13 and 15 in Cooper *et al.* also include the requirement for a light-impervious cover, as discussed above, and thus would not be obvious over the proposed count, Applicant's

claim 38, or Cooper *et al.*'s claims 6-10 and 14. Claim 12 requires the light-impervious cover rotatably engages with the lamp housing, which again the requirement of the light-impervious cover in addition to the additional requirement of engagement is not obvious from the count assuming the count was prior art. Claim 38 requires this same cover from claim 12 plus a portion of the cover must be transparent or open. Again, the requirement of the light-impervious cover in addition to the additional requirement of transparency is not obvious from the count assuming the count was prior art. Claim 15 also requires the light-impervious cover as in claim 12, in addition to a requirement that there be at least one source of white light. The requirement of the light-impervious cover in addition to the white light requirement are not obvious over the proposed count or Applicant's claim 38.

Claims 16-21 of Cooper *et al.* all require an extendible handle attached to the lamp housing. As already discussed in connection with claims 1-5, an extendible portion of the handle for extending the pen light from the handle, whether or not retractable into the handle, is clearly not the same as (35 U.S.C. § 102) and would not be obvious over (35 U.S.C. § 103) the proposed count, Applicant's claim 38, or Cooper *et al.*'s claims 6-10 and 14. In the latter instance, a flexible shaft which is elongated but of fixed longitudinal dimension has a first end fixed to the lamp housing and a second end fixed to the handle.

Similarly claims 22- 29 all require an extendable and retractable handle that is telescopic, a feature clearly not obvious in view of the proposed count, Applicant's claim 38, or Cooper *et al.*'s claims 6-10 and 14. As noted, these simply call for an elongated flexible shaft fixed or attached to the lamp housing and handle.

1.607(a)(5):

Support for Applicant's claim 38 will be found throughout the present application and in particular on page 6, lines 5 *et seq.*:

The flexible mount leak detector consists of a main body 202, flexible stalk 204 and a sensor probe head 206. In one embodiment of the present invention, the **sensor probe head 206** contains a **UV/Blue LED light source 208** and a halogen sensor access port or halogen sensor 210. The **main body 202** provides for **hand held portability** and provides the electrical power for the UV/Blue LED source 208 and the interface. The **flexible stalk 204 provides fixed multiple positions of sensor head** and a conduit for electrical power required by remote mount sensors. The flexible stalk 204 also provides pneumatic conveyance required by sensor probe head 206. **Sensor probe head 206 is connected to main body 202 by the flexible stalk 204.** The shape of the main body 202 is adapted to be easily held and allow the device to be simply operated with a single hand, enabling the UV/Blue LED light source 208 to be quickly activated and deactivated and the halogen gas detector to be controlled. [*emphasis added*]

As is demonstrated in the above cited section of the application, claim 38 of the present application corresponds with the count in that there is a lamp housing (**sensor probe head 206**), at least one LED is disposed within the lamp housing and capable of emitting light within a wave length band below about 500 nm (**sensor probe head 206 contains the UV/Blue LED light source 208**, which is inherently below 500nm as supported by the C.I.E. standard method of describing colors and other standard and government publications); includes a handle (**main body 202 provides for hand held portability**); an elongated flexible shaft having a first end fixed to said lamp housing and a second end fixed to said handle (**sensor probe head 206 is connected to main body 202 by the flexible stalk 204**) and whereby bending said flexible shaft permits said lamp housing to assume a variety of angular positions relative to said handle (**flexible stalk 204 provides fixed multiple positions of sensor head**).

Applicant is in full compliance with 35 USC § 135(c) since Cooper *et al.* issued December 10, 2002 and the present request is being made well within the one year statutory limitation. In addition, the Examiner will note that this request is governed by 37 CFR § 1.608(a), not 1.608(b). Thus, Cooper *et al.*'s filing date is July 5, 2001. Applicant's effective filing date for provisional application, Serial No. 60/304,928, is July 12, 2001, one week (*i.e.* less than three months) after the filing date of Cooper *et al.*'s patent. Support for Applicant's claim 38 can be found throughout Serial No. 60/304,928, in particular on page 3, line 21, through page 4, line 6:

The flexible mount leak detector consists of a **body 202**, **flexible stalk 204** and a **sensor probe head 206**. In one embodiment of the present invention, the **sensor probe head 206 contains a UV/Blue LED source 208** and a halogen sensor access port or halogen sensor. The body 202 provides for hand held portability and provides the electrical power for the UV/Blue LED source 208 and the interface. **The flexible stalk 204 provides fixed multiple positions of sensor head** and a conduit for electrical power required by remote mount sensors. The flexible stalk 204 also provides pneumatic conveyance required by sensor probe head 206. **Sensor probe head 206 is connected to body by the flexible stalk 204.**

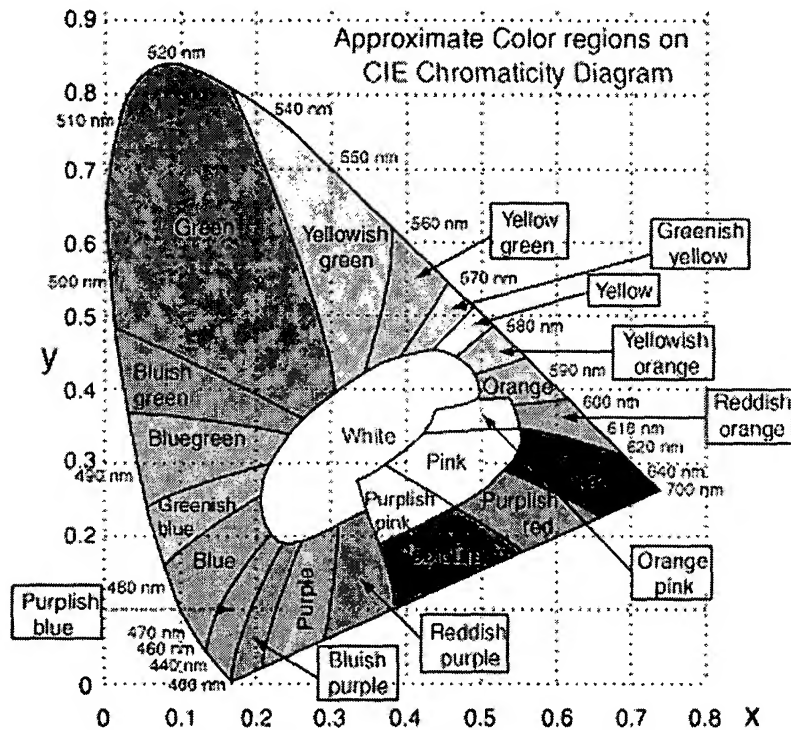
Figures 2, 3a, 3b, 3c, and 3d of Serial No. 60/304,928 also show the embodiment of claim 38. The UV/Blue LED source encompasses a range of wavelength band which is below 500 nm.

Applicant notes that UV (ultraviolet) light has a wavelength shorter than visible blue light (*see* "Wavelength, Frequency, and Energy - Regions of the Electromagnetic Spectrum" published by NASA [[http://imagine.gsfc.nasa.gov/docs/science/know\\_11/spectrum\\_chart.html](http://imagine.gsfc.nasa.gov/docs/science/know_11/spectrum_chart.html)], which for the convenience of the Examiner can be found in the appendix to this preliminary amendment).

The Commission International de l'Eclairage (CIE), which was first adopted in 1931, is the standard method of describing all possible colors. The applicant has reproduced below one



of the widely recognized C.I.E. Chromaticity Diagrams, showing associated color regions



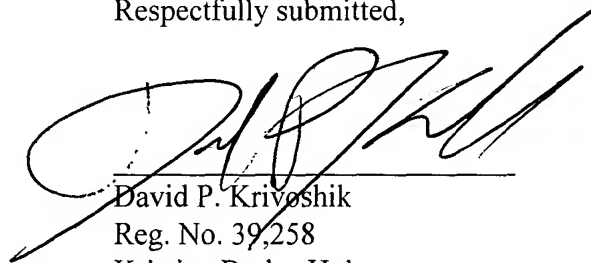
(see "CIE Color System" published by the Department of Physics and Astronomy, Georgia State University [<http://hyperphysics.phy-astr.gsu.edu/hbase/vision/cie.html>] , which for the convenience of the Examiner can be found in the appendix to this preliminary amendment). The boundaries and the color names shown in this diagram were previously adapted from an article by Brand Fortner, "Number by Color", Part 5, SciTech Journal 6, p32, May/June 1996. Applicant notes that the internationally recognized standard C.I.E. Chromaticity Diagram clearly shows that the wavelength of blue light is below 500 nm.

Counsel submits there is a basis upon which Applicant is entitled to a judgment relative to the patentee. *See also* Declaration of Counsel submitted herewith.

IV. Summary

Applicant respectfully requests prompt declaration of the requested interference between Applicant's claim 38 and Cooper *et al.* claims 6-10 and 14.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'D. P. Krivoschik', is written over a horizontal line.

David P. Krivoschik  
Reg. No. 39,258  
Kristine Butler-Holston  
Reg. No. 42,376  
Attorneys for Applicant

Date: August 5, 2003

Mathews, Collins, Shepherd & McKay, P.A.  
100 Thanet Circle Suite 306  
Princeton, NJ 08540- 2974

Telephone: 609-924-8555  
Facsimile: 609-924-3036